

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1313 of 1997

WITH

CIVIL APPLICATION NO. 5961 OF 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

UNITED INDIA INSURANCE CO.LTD.

Versus

VALJIBHAI JADAVBHAI SAVALIYA

Appearance:

MR PV NANAVATI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 26/06/97

This is an appeal u/s 173 of the Motor Vehicles Act, 1988 at the instance of the appellant - United India Insurance Co. challenging the judgment and award recorded in Motor Accident Claim Petition No.. 397 of 1995 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar on 5-11-1996.

2. Shortly stated the facts are that respondent no. 1 is a original claimant who had sustained injuries of varying gravity on account of the vehicular accident which occurred, on 23-3-1995, near village Kosamba on Ahmedabad National Highway No.8-A. The unfortunate accident took toll of two lives and fortunately, the original claimant of this appeal could escape from the major mishap. But the injuries sustained by him in the accident have left permanent disablement to the extent of 14% in the right hand and scar and other injuries. The respondent - original claimant claimed an amount of Rs. 70,000/- by way of compensation for the personal injuries and permanent partial disablement. The Tribunal upon assessment and analysis of the evidence awarded Rs. 59,000/- with proportionate costs and interest.

3. It transpires from the copies of the evidence supplied to us that the original claimant has sustained fracture of right hand radius bone swelling over dorsum of right wrist, tenderness, scar over nostril and left eye brow. It may be stated that all these injuries have been elaborately stated in the certificate produced at Exh. 81. The Medical Officer has evaluated disablement to the extent of 14% of the right hand. The claimant was admitted in the Hospital at Surat. In fact, he was kept as an indoor patient in Mahavir Hospital, at Surat for three days.

4. The claimant was doing diamond cutting and polishing work and according to the evidence he was earning Rs. 3,500/- p.m. It is noticed by the Tribunal that on account of permanent partial disablement in the vital limb of right hand the claimant is likely to suffer loss of Rs. 38,000/- under the head of future economic loss. This is the head under which quantum awarded by the Tribunal is challenged.

5. Prima facie, it may appear to be little higher than normal. But that is not point to invoke the powers. It is a settled proposition of law that the Appellate

Court in such compensation cases would be inclined to interfere provided the amount of compensation awarded by the Tribunal is either excessive or grossly inadequate. Considering overall picture emerging from the facts on the record of this group of matters and difference even if we interfere with the amount of compensation under the head of future economic loss will not be more. Therefore, we do not propose to interfere. With the result, the appeal is required to be rejected at the admission stage. With caution and parting thought which will be appreciated and considered in its proper spirit by the Tribunal concerned the amount of compensation as per legislative scheme ought to be just and reasonable. Nobody could be allowed to make windfall out of the calamity. It is, therefore, incumbent upon the Tribunal to consider the facts and circumstances of the case and to make assessment which should be just and reasonable as contemplated by the provisions of Motor Vehicles Act. With this thought, we dismiss this appeal at the inception.

6. The attention of this Court was drawn by Mr. Nanavati that the amount of Rs. 25,000/- has already been deposited along with the appeal. Obviously, since the appeal has no more survival value the amount of Rs. 25,000/- deposited along with the appeal shall have to be transmitted to the Tribunal concerned. Accordingly, the office is directed to transmit the amount of Rs. 25,000/- to the Tribunal concerned so that the Tribunal can pass appropriate order for disbursement in terms of the impugned award.

Civil Application No. 5961 of 1997 also stands disposed of in view of rejection of the appeal.

-0-0-0-0-0-